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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,381	10/29/2001	Aaron Dew	50R4788	9019
7590	05/26/2005			EXAMINER
John L. Rogitz Rogitz & Associates Suite 3120 750 B Street San Diego, CA 92101				KOSTAK, VICTOR R
			ART UNIT	PAPER NUMBER
			2614	
				DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/000,381	DEW ET AL.	
	Examiner	Art Unit	
	Victor R. Kostak	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02 May 2005.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-7, 9, 11-21, 25-33 and 35 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1, 2, 4-7, 9, 11-14, 32, 33 and 35 is/are rejected.
 7) Claim(s) 9, 11-21, 25-33 and 35 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 -- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

1. Claims 9, 11-21, 25-33 and 35 are objected to because of the following informalities: the claims following claim 7 are not in compliance with rule 126 because there was no original claim
8. Also, there is no original claim 34 either.

Applicant is also informed that "*and a time*" is still recited in the preamble of claim 1, but removed from the body of the claim (in an effort to circumvent the applied art). Appropriate correction is required.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4, 5, 7, 9 and 11-13 are now rejected under 35 U.S.C. 102(e) as being anticipated by Wong (of record).

Reviewing Wong, his system (noting Fig. 2) automatically establishes at least one of audio and video settings (col. 4 lines 38-46) based on the location of a TV (col. 8 line 1) with respect to a dwelling because the apparatus is capable of adjusting parameters based on it being used indoors or outdoors relative to a dwelling (e.g. col. 3 lines 60-63) by input element 1 (environment and operator sensor 1) in response to respective ambient lighting conditions, thereby meeting claims 1 and 9.

As for claims 4 and 5, video and audio settings are adjusted, as mentioned above.

As for claim 7, contrast is adjusted based on the ambience (col. 4 lines 41-42), again, which is based on the TV location with respect to a dwelling.

Regarding claim 11, audio volume is an adjustable parameter (col. 4 lines 44-45).

As for claim 12, the settings are done heuristically (e.g. col. 5 lines 51-54; col. 7 lines 63-66).

Considering claim 13, environment and operator sensor 1 serves as the input device that can be manipulated to establish the settings.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wong.

It would have been obvious to one of ordinary skill in the art to adjust the color of any typical information displayed on the television (or other type of display device allowed by Wong) such as user-guides presented as menus, which are well known in the art, and since color is an parameter expressly recited as being adjustable.

4. Claims 1, 2, 4, 5, 7, 9 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Shibamiya (also of record).

The system of Shibamiya (noting particularly Figs. 1, 3, 4, 7-10 and 13) involves automatically establishing TV settings based on a location of a TV with respect to a dwelling.

The process is carried out by identifying the settings of a television in one room and storing those settings using a remote controller (Figs 1, 2), and then transferring the settings to a television at another location within the dwelling, thereby saving the viewer the effort of reapplying and/or adjusting the settings of a television located in another room to those of the first television ([0008], [0043], [0045], [0051]), which settings could involve audio and /or video settings ([0043], [0122]), thereby meeting claims 1, 4, 5 and 9. (Shibamiya also involves the time of day for settings adjustment :[0085]).

As for claim 2, input by the viewer is done using remote controller 200.

As for claim 7, the hue (color) can be adjusted ([0122]).

Regarding claim 11, audio volume can also be adjusted ([0122] again).

5. Claims 6, 32, 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shibamiya.

As for claim 6, Shibamiya points out that data other than specific program data can be received such as program guide data ([0041]), which typically includes menus or listings to assist the viewer. Since color can be adjusted, as specifically disclosed, it would have been obvious to one of ordinary skill in the art to adjust any of the data available for presentation, such as the program guides or menus, thereby accommodating the user's specifically tailored display preferences.

As for claim 32, since closed-captioning is required to be available to the user (so mandated by the FCC), and the user can readily select to display closed-captioning, then it would

accordingly have been obvious to carry over that setting to a television located in another room, such being the focus of Shibamiya's invention.

Considering claim 33, Shibamiya states that the quality of sound can be adjusted and leaves open other setting options, for both video and audio parameters ([0122]). In view of this, it would have been obvious to account for any setting that provides enhanced program reproduction including the audio component, such as the dynamic range, since Shibamiya allows for quality adjustment of the audio and video settings.

Similarly regarding claim 35, since Shibamiya points out that settings involving audio quality are to be considered (noting again [0122]), then standard parameters such as bass and treble would accordingly have been obvious to account for.

6. Claims 3, 15-21 and 25-31 are allowable over the prior art.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor R. Kostak whose telephone number is (571) 272-7348.

The examiner can normally be reached on Monday - Friday from 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(703) 872-9306 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 308-HELP.

u. k

Victor R. Kostak
Primary Examiner
Art Unit 2614

VRK